



Share Certificates in accordance with Turkish Legislation

Authors: Att. Celal Can Dođancı and Dimitra Pribiloviç of AKT Law Firm.

The recent amendments on the Turkish legislation have created fundamental evolution on the shareholder structures of the joint-stock companies. The main purpose of the amendments is to avoid the financing of the terrorism. Therefore, according to the recent amendments have changed the principles of the bearer shares as explained below.

Stock certificates or share certificates are among the most preferred instruments for investing in the exchange market. It is also a popular way for companies to raise funds for their businesses. Generally, purchasing a share means receiving voting rights on companies' general assembly meetings and collecting the company's profits based on their percentage of ownership. Share certificates, which are considered valuable papers given by capital companies to their shareholders to certify their shares and their partnerships, are regulated in the first section of the seventh chapter titled "Securities" of the Turkish Commercial Code numbered 6102 ("TCC"). According to the TCC, share certificates should include information such as corporate name, date of establishment, authorized capital stocks, number of shares owned, date of purchase, and at least two authorized signatories.

Types of the Share Certificates and their Differences

Under Article 484 p.1 of the TCC share certificates can be issued either as registered or bearer share certificates. A registered share certificate is a valuable paper that the owner can easily understand from the content of the share. Briefly, a registered share certificate is a paper issued in the name of a natural or legal person and represents his shares in a joint-stock company. A registered share is a legally ordered share certificate. As a matter of fact, with the TCC (Art. 416/2), the transfer of share is carried out by passing the endorsement and possession. To keep the transfer valid on behalf of the company, the transaction must be recorded in the share ledger of the company. The company does not automatically register its shares in the share ledger, except for establishment and capital increases. The said matter must be requested by the relevant parties, especially by the transferee of the shares. In registered shares, even if the entire capital is not paid, the share certificates can be printed and distributed to the shareholders. On the other hand, Articles 486 and 487 of the TCC issue in a joint-stock company, the bearer share certificates must be issued and distributed to the shareholders within three months after the full payment of the share price. According to Article 484 p.2 of the TCC "Bearer share certificates cannot be issued for shares whose values have not been fully paid. Those issued in violation of this provision are void. Compensation rights of beneficiaries are reserved". As can be seen from the article above, it is not possible to issue bearer share certificates if all share prices are not paid. If



these prices are not paid, the decision of the board of directors to print the bearer share certificates will not be registered or announced in the trade registry.

Changes in Accordance with Law No 7262 Related to Bearer Shares

The official Gazette dated December 31, 2020 (5th repeating) numbered 31351 published Law No 7262 “Law on The Prevention of Financing of The Spread of Mass Destruction Weapons” (“**Law No 7262**”). With Law No. 7262, TCC's ledger records obligations, transfer, and printing bearer shares conditions have been changed. The purpose of Law No. 7262 is determined under Article 1 as to regulate the procedures and principles regarding the implementation of the sanction decisions of the UNSC on the prevention of financing the proliferation of weapons of mass destruction. Previously, bearer shares could only be transferred by paper transfer. According to the provision of Article 415 of the TCC, for bearer shares, there was no need to notify or record the transfer to the company or any other authority. While one its most valuable advantages was the ease of transfer of the bearer shares, in companies whose bearer shares have been printed, the shareholders still had the right to remain anonymous.

a. Notification to the Central Registry Agency

As explained above, as a rule, to issue bearer share certificates, the entire committed capital must be paid first. Only after the company's board of directors decides to issue share certificates within three months following the completion of these payments. This decision is registered at the relevant Trade Registry Office and announced in the Turkish Trade Registry Gazette. Bearer share certificates can be transferred by passing the possession of the share to the transferee, that is, by the delivery of the share to the transferee. However, it should be noted that, with the amendment made within the framework of Law No. 7262, it is obligatory for the transferee of the share certificate to notify the Central Registry Agency (“**CRA**”) for the transfer to take effect before the company and third parties. This notice must be made before the bearer shares certificates are distributed to the shareholders.

On the other hand, a provisional article has been introduced with Law No. 7262 for shareholders who currently hold bearer shares. In this context, holders of bearer shares have to apply to the joint-stock company until December 31, 2021 with their share certificates to make the necessary notification to CRA. After the above-mentioned application, within 5 (five) business days the Board of Directors of the company, notifies CRA about the bearer shareholder and their shares.

b. Participation to the General Assembly

According to TCC Article 415, bearer shareholders had to prove their share ownership to participate in the General Assembly of the company. The relevant article said: “*Bearer share certificate holders can attend the general assembly meeting by presenting the cards*”



proving that they are the owner of these shares at the latest one day before the general assembly meeting day. However, the shareholders who prove that they have taken over the bearer share certificate on a date after the issuance of the entrance card may also attend the general assembly.”. However, according to Article 28 of Law No. 7262, this article has been repealed.

Following, Article 29 of Law No. 7262, Article 415 p.3 of the TCC has been amended, and it has been regulated that the board of directors must obtain the list of bearer shareholders who can attend the general assembly from CRA and that a “shareholders chart” must be prepared under this list. Therefore, unless the obligation of notification of CRA has been fulfilled, it will not be possible for the bearer shareholders to attend the General Assembly of the company.

c. Transfer of Bearer Shares

With Law No. 7262, the procedure for the transfer of bearer shares has also changed. For the transfer to take effect, the transferee who has acquired ownership by receiving the share certificate must notify CRA. If the transferee of the bearer share certificate does not make the necessary notification, the transferee shall not be able to use its share-related rights arising from the TCC until the notification has been made.

With regards to the notification, the date of the notification is taken as the start date for the exercise of the rights related to the share certificate against third parties. According to Article 30 of Law No. 7262, Article 426 of the TCC has amended as “*the person who proves the ownership of the bearer share certificate and notifies Central Registry Agency is authorized to use the rights arising from the shareholding against the company*”.)**Failure to Fulfill the Notification Obligation**

With Law No. 7262, an administrative penal clause has been regulated both for the Board of Directors of the joint-stock company and the shareholder who takes over the bearer share certificates, if they fail to fulfill the notification obligation.

According to Law No. 7262, if the Board of Directors issues new bearer shares and does not notify CRA, the Board of Directors will be sentenced to 20,000 TL administrative fine. Likewise, the transferee who does not notify CRA notwithstanding receiving the bearer share certificate will be sentenced to an administrative fine of 5,000 TL.

Conclusion

The obligation to notify the CRA of the transfer of bearer share certificates means that the identities of the relevant shareholders will be kept by CRA. In this case, it should be concluded that although the “anonymity” feature, which should not be important for the partnership, is not directly eliminated within the scope of the implementation of the



provisions related to the shareholders, however, will decrease to some extent. Even if the main purpose of the law is to prevent the financing of terrorism, these new obligations will also bring consequences in terms of the free transfer of shares in joint-stock companies and the anonymity of the shareholder.

Source

Yavuz AKBULAK “TTK Işığında Anonim Şirketlerde Pay Senetleri” (<https://dergipark.org.tr/tr/download/article-file/398510>)

Onur GÜNERİ, Nazlıcan ÖZGÖR “Transfer Of Bearer Share Certificate In Turkish Joint Stock Companies” (<https://www.mondaq.com/turkey/contracts-and-commercial-law/762166/transfer-of-bearer-share-certificate-in-turkish-jo305nt-stock-companies>)

Dr. Damla Gül TARHAN “Türk Ticaret Kanunu’nda Öngörülen Hamiline Yazılı Pay Senedi Devirlerinin Bildirilmesi Zorunluluğu” (<https://blog.lexpera.com.tr/turk-ticaret-kanununda-ongorulen-hamiline-yazili-pay-senedi-devirlerinin-bildirilmesi-zorunlulugu/>)

Gülenay KAVCAR, Demet AKÇAALAN, Ömer Faruk CAN “Hamiline Yazılı Hisse Senetleri İle İlgili 7262 Kanun Uyarınca Yapılan Değişiklikler” (<https://www.kilinclaw.com.tr/hamiline-yazili-hisse-senetleri-7262-sayili-kanun/>)

Ali DOĞAN “ANONİM ŞİRKETLERDE HİSSE SENETLERİNİN ŞEKLİ, TÜRLERİ, BASTIRILMASI VE VERGİSEL AVANTAJLARI” (<https://www.gaziantepsmmmo.org.tr/makaleler/anonim-sirketlerde-hisse-senetlerinin-sekliturleribastirilmesi-ve-vergisel-avantajlari.html>)

Mehmet MAÇ, Cüneyt BÜYÜKYAKA “Anonim Şirketlerde Hisse Devrinin Geçerli Olması İçin Gerekli Hukuki Şartlar ve İşlemler” (<http://www.lebibyalkin.com.tr/mevzuat/diger/makale/anonim-sirketlerde-hisse-devrinin-gecerli-olmasi-icin-gerekli-hukuki-sartlar-ve-islemler.html>)

Sema AKSOY, Yüksek Lisans Tezi, “ANONİM ŞİRKETLERDE PAY VE PAYIN DEVRİ”, Temmuz 2018, (<https://core.ac.uk/download/pdf/162235283.pdf>)